

C O P Y

*in opinion*

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*see cover  
attached*

October 25, 1955

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CONCORD, N.H.

Honorable Lane Dwinell, Governor  
State of New Hampshire  
Concord, New Hampshire

Dear Governor Dwinell:

Your office recently presented to us for examination a form of "Interstate Compact on Juveniles" submitted to you by the Council of State Governments under date of October 12, 1955. In its letter of transmittal the Council points out that New Hampshire has ratified the compact in Laws 1955, c. 121, and suggests that you on behalf of the State execute the draft submitted.

Upon a careful comparison of the Council draft with the form of the compact authorized by the legislation cited it is our opinion that execution of the Council draft is not authorized by the statute.

Laws 1955, c. 121, authorizes the Governor on behalf of the State to enter into a compact with other States with respect to juveniles, such compact to be "substantially in the following form." A form of compact, herein referred to as the statutory form, is set out at length in the statute. Because of the use of the word "substantially" in the enabling legislation we have deemed the many verbal differences between the Council draft and the statutory form to be immaterial, so long as the sense of the statutory draft is reflected in the Council draft. Immateriality cannot, however, be ascribed to an entire divergence in concept between the two forms; and such entire divergence is found as hereinafter described.

One of the purposes, perhaps the principal purpose, of the compact is to provide a means for the return of a juvenile from a state to which he may have run or fled, to the state where by law he ought to be. Since neither juveniles who have been adjudged merely delinquent nor, of course, juveniles who have never been in conflict with the law are subject to extradition, a compact is necessary to effect this salutary purpose. It is in the differing means for return prescribed in the two forms that the divergence is found.

We may compare the varying procedures prescribed in the case of a runaway, that is, a juvenile who has not been adjudged a delinquent. Under the statutory form the person entitled to his custody petitions the Juvenile Court for the issuance of an application for a requisition for the juvenile's return. The Juvenile Court considers the petition in determining if in fact the juvenile ought to be returned; and if the Court so determines, he presents a written application to the executive authority of his state asking that a requisition issue for such return. The executive authority, if he concur, issues his requisition upon the governor of the state where the juvenile is found. And such governor, upon receipt of the requisition, issues his warrant for the arrest of the juvenile. Upon arrest the juvenile is taken before a juvenile court in the state where he is found, and then, if all be in order, he is delivered over to the authorities of the demanding state.

This, then, is the procedure which the State by its Legislature has authorized in the case of runaways. The State has not approved any plan which would by-pass the Governor and allow a court in the demanding state, be it this or another, to issue a requisition directly upon the executive authority of the asylum state.

Yet such is precisely what the Council draft compels. Starting out as described above the person entitled to custody petitions the Juvenile Court with respect to the return of the juvenile. The Court considers the petition; and if he is of opinion that the juvenile should be returned he, the Court, presents a requisition to "the appropriate court or the executive authority" of the asylum state. And such "appropriate court" as well as the executive authority of the asylum state may issue a warrant for taking the juvenile into custody for delivery to the authorities of the demanding state after a certain review of the matter in the courts of the asylum state.

Succinctly, if the Council draft be executed it will purport (1) to authorize juvenile courts of this state, acting as the demanding state, to issue requisitions upon other states for juveniles who have run away to such states, and (2) to authorize juvenile courts of this state, acting as the asylum state, to issue warrants for the arrest of juveniles who have fled here at the instance simply of a court or of the executive authority of another state. By the statutory form only the executive authority of this state may (1) issue such requisitions and (2) issue such warrants.

A similar variance is found with respect to juvenile delinquents who have escaped or absconded to another state. The statutory form prescribes participation by the executive authority of this state, both as a demanding state and as an asylum state. The Council draft permits the circumvention of the Executive.

OFFICE OF ATTORNEY GENERAL  
New Hampshire

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These variances, in our opinion, are so fundamental as to require the conclusion that the Council draft of compact is not substantially similar to the compact in which the State has signified its willingness to enter by Laws 1955, c. 121.

Very truly yours,

Warren E. Waters  
Deputy Attorney General

WEW/aml  
Encls.